

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KENDALL GUINN,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 04-1529-KAJ
)	
WARDEN RICK KEARNEY,)	
COMMISSIONER STANLEY TAYLOR,)	
and CHIEF BUREAU OF PRISONS)	
PAUL W. HOWARD,)	
)	
Defendants.)	

DEFENDANTS' ANSWER TO THE COMPLAINT

COME NOW the Defendants Warden Rick Kearney, Commissioner Stanley Taylor and Bureau of Prisons Chief Paul W. Howard, by and through the undersigned counsel, and hereby answer the Complaint. Because the Complaint is not set forth in numbered paragraphs, each sentence is identified and responded to as follows:

1. Sentence beginning "I the Plaintiff Kendall Guinn:" Admitted.
2. Sentence beginning "I filed a [sic] inmate grievance:" Admitted.
3. Sentence beginning "Because the plaintiff felt:" Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.
4. Sentence beginning "There are two toilets:" Because Plaintiff does not specify a date and location, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence. Denied that there are two toilets and two sinks for fifty inmates in the medium security building at Sussex Correctional Institution ("SCI").

5. Sentence beginning “The other toilet:” Because Plaintiff does not specify a date or location, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence. Denied that there are two toilets and two sinks for fifty inmates in the medium security building at SCI.

6. Sentence beginning “A work order was filed:” Because Plaintiff does not specify a date or individual, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

7. Sentence beginning “There was only one and half shower:” Because Plaintiff does not specify a date or location, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence. Denied that there are one and one-half showers for fifty inmates in the medium security building at SCI.

8. Sentence beginning “The pipes leak:” Because Plaintiff does not specify a date or location, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence. Denied that the pipes and ceiling leak in the medium security building at SCI.

9. Sentence beginning “Fungus and mold:” Denied.

10. Sentence beginning “Plaintiff also filed a grievance:” Denied.

11. Sentence beginning “The building was built:” Denied.

12. Sentence beginning “There is close to fifty men:” Admitted.

13. Sentence beginning “The tiers are unbearable:” Denied.

14. Sentence beginning “I the plaintiff asked for:” Admitted that Plaintiff filed grievances in 2004 regarding the tier fans.

15. Sentence beginning “Inmates with health problems:” Because Plaintiff does not specify dates, location or inmates, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence. Denied that Defendants engaged in any wrongful conduct with respect to the health and well-being of inmates housed in the medium security building at SCI.

16. Sentence beginning “When the maintenance worker come [sic]:” Because Plaintiff does not specify dates, location or individuals, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

17. Sentence beginning “Several of the maintenance workers:” Because Plaintiff does not specify dates, location or individuals, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

18. Sentence beginning “They will not give the plaintiff:” Because Plaintiff does not specify dates, location or individuals, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

19. Sentence beginning “Plaintiff also complained:” Admitted that Plaintiff filed a grievance in 2004 regarding spiders and flies. Defendants are without sufficient information to admit or deny the remaining allegations set forth in this sentence.

20. Sentence beginning “Plaintiff asked for:” Admitted that Plaintiff filed a grievance in 2004 regarding spiders and flies. Defendants are without sufficient information to admit or deny the remaining allegations set forth in this sentence.

21. Sentence beginning “I was denied:” Admitted that, in response to Plaintiff’s 2004 grievance concerning spiders and flies, due to safety concerns, Warden

Kearney prohibited the use of fly strips on the tiers in the medium security building at SCI.

22. Sentence beginning “On October 12, 2004:” Admitted that on October 12, 2004, there was smoke on B and D tiers in the medium security building at SCI. Denied as to the remaining allegations set forth in this sentence.

23. Sentence beginning “Inmate filed a grievance :” Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

24. Sentence beginning “No smoke detectors:” Denied.

25. Sentence beginning “Also the sprinklers:” Admitted.

26. Sentence beginning “Inmates spent the night:” Because Plaintiff does not specify a date, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

27. Sentence beginning “We were told:” Because Plaintiff does not specify a date or individuals, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

28. Sentence beginning “The exhibits will show:” The Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

29. Sentence beginning “As of December 10, 2004:” Denied.

30. Sentence beginning “Inmates are forced:” Denied.

31. Sentence beginning “Maintenance worker have been:” Because Plaintiff does not specify dates, location or individuals, Defendants are without sufficient information to admit or deny the allegations set forth in this sentence.

32. Sentence beginning “This shows that:” Because this sentence is illegible, Defendants are unable to admit or deny the allegations set forth in this sentence.

RELIEF

1. It is specifically denied that Plaintiff is entitled to compensatory damages or punitive damages.

2. It is specifically denied that Plaintiff is entitled to injunctive or any other relief.

AFFIRMATIVE DEFENSES

3. Plaintiff has failed to state a claim upon which relief can be granted.

4. Plaintiff has failed to exhaust his administrative remedies.

5. Defendants are immune from liability under the Eleventh Amendment.

6. Defendants are entitled to qualified immunity.

7. As to any claims under state law, Defendants are entitled to immunity under the State Tort Claims Act, 10 *Del. C.* § 4001 *et seq.*

8. As to any claims under state law, Defendants are entitled to sovereign immunity in their official capacities.

9. Defendants cannot be held liable in the absence of personal involvement for the alleged constitutional deprivations.

10. To the extent that Plaintiff seeks to hold Answering Defendants liable based on supervisory responsibilities, the doctrine of *respondeat superior* or vicarious liability is not a basis for liability in an action under 42 *U.S.C.* § 1983.

11. Defendants, in their official capacities, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 U.S.C. § 1983.

12. Insufficiency of service of process.

13. Insufficiency of process.

14. Lack of jurisdiction over the person and subject matter.

WHEREFORE, the Defendants respectfully request that judgment be entered in their favor and against Plaintiff as to all claims and that attorney fees be awarded to the Defendants.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Eileen Kelly
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Dated: July 11, 2005

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2005, I electronically filed *Defendants' Answer to the Complaint* with the Clerk of Court using CM/ECF. I hereby certify that on July 11, 2005, I have mailed by United States Postal Service, the document to the following non-registered party: Kendall Guinn.

/s/ Eileen Kelly
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